

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A124315

v.

(Lake County  
Super. Ct. No. CR915895)

TIMOTHY HANS FREEMAN,

Defendant and Appellant.

\_\_\_\_\_/

Timothy Hans Freeman appeals from a judgment entered after he pleaded no contest to forcible sexual intercourse with a child who is 10 years of age or younger, (Pen. Code, § 288.7, subd. (a))<sup>1</sup> and aggravated sexual assault of a child under the age of 14 (§ 269, subd. (a)(1)). He contends (1) the sentence imposed on one of his counts should have been stayed, (2) the court imposed an incorrect sentence on one of his counts, and (3) the court erred when it imposed a \$30 fine. We conclude appellant's first two arguments are meritorious and order the appropriate modifications. In all other respects, we affirm.

\_\_\_\_\_  
<sup>1</sup> Unless otherwise indicated, all further section references will be to the Penal Code.

## I. FACTUAL AND PROCEDURAL BACKGROUND

The precise facts of appellant's offense are not relevant to the issues that have been raised. It should suffice to say that appellant orally copulated and then raped a nine-year-old girl with whom he was living.

Based on these facts, an information was filed charging appellant with, inter alia, the offenses we have set forth above. As is relevant here, the information also alleged appellant had a prior strike within the meaning of the three strikes law (§ 667, subds. (b)-(i)), and that appellant was a habitual sexual offender. (§ 667.71.)

The case was resolved through negotiation. Appellant pleaded no contest to the offenses we have set forth above and admitted the allegations. In exchange, other counts and allegations were dropped.

Subsequently, the court sentenced appellant to 50 years to life in prison.

## II. DISCUSSION

### A. Section 654

The trial court imposed a term of 50 years to life for appellant's violation of section 288.7, subdivision (a), and a concurrent term of 50 years to life for appellant's violation of section 269, subdivision (a)(1). Appellant now contends the sentence imposed on the section 269, subdivision (a)(1) violation should have been stayed under the provisions of section 654.<sup>2</sup>

The People concede the error and we agree. We order the appropriate modification.

### B. Validity of the Sentence

As we have stated, the court imposed a sentence of 50 years to life for appellant's violation of section 269, subdivision (a)(1). Appellant contends the court erred because the correct sentence for that offense is 30 years to life. (See §§ 269, subd. (b), 667, subd.

---

<sup>2</sup> As is relevant, section 654 states: "(a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

(e)(1).) Again, the People concede the error and we agree. We order the appropriate modification.

### C. Validity of the Fine

The trial court ordered appellant to pay a \$30 fine under Government Code section 70373.<sup>3</sup> Appellant now contends the court erred because a fine under that statute may only be imposed for violations of the Vehicle Code.

We interpret a statute by looking at the plain meaning of the words used, giving them their usual and ordinary meaning. (*People v. Yartz* (2005) 37 Cal.4th 529, 537-538.) “If there is no ambiguity in the statutory language, its plain meaning controls . . . .” (*Id.* at p. 538.)

Here, the Government Code section 70373, fairly read, states that a fine must be imposed on “every conviction for a criminal offense” except for certain violations of the Vehicle Code. It is not limited to violations of the Vehicle Code.

To the extent there is any doubt on this issue, the legislative history of the Government Code section 70373 puts it to rest. The Legislative Counsel’s Digest of the bill that added the statutory language at issue states that the “bill would . . . impose an additional assessment upon every conviction for a criminal offense.” (Legis. Counsel’s Dig., Sen. Bill No. 1407 (2007-2008 Reg. Sess.) Stats. 2008, ch. 311, p. 2145.) We conclude the court correctly imposed the \$30 fine.

### III. DISPOSITION

The trial court is ordered to prepare and to forward to the Department of Corrections an amended abstract of judgment showing a sentence of 30 years to life is

---

<sup>3</sup> Government Code section 70373, subdivision (a)(1) states in part: “To ensure and maintain adequate funding for court facilities, an assessment shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses as defined in subdivision (i) of Section 1463 of the Penal Code, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. The assessment shall be imposed in the amount of thirty dollars (\$30) for each misdemeanor or felony . . . .”

imposed on appellant's violation of section 269, subdivision (a)(1), but that the sentence is stayed under section 654.

In all other respects, the judgment is affirmed.

---

Jones, P.J.

We concur:

---

Needham, J.

---

Bruiniers, J.